

Message Text

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ORIGIN ARA-10

INFO OCT-01 ISO-00 L-03 SAB-01 DOTE-00 EPA-01 OES-03

CIAE-00 INR-07 NSAE-00 JUSE-00 SS-15 SP-02 NSC-05

SSO-00 NSCE-00 INRE-00 /048 R

DRAFTED BY ARA/PAN:DJPEASHOCK:ZC

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ARA/ECP:MR. FALKNER (DRAFT)

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FM SECSTATE WASHDC

TO AMEMBASSY PANAMA IMMEDIATE

INFO AMEMBASSY BOGOTA IMMEDIATE

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E.O. 11652:N/A

TAGS: ELTN, PN

SUBJECT: DISTRICT OF COLUMBIA COURT INJUNCTION ON DARIEN

GAP HIGHWAY

REFERENCE: PANAMA 6530

1. LOCAL FHWA AND EMBASSY READING OF SUBJECT PRELIMINARY INJUNCTION IS CORRECT. "THE INJUNCTION PROHIBITS "THE DEFENDENTS, THEIR AGENTS, OFFICERS, SERVANTS, EMPLOYEES, AND ATTORNEYS, AND ANY PERSON IN ACTIVE CONCERT OR PARTICIPATION WITH THEM ARE HEREBY ENJOINED FROM ENTERING INTO ANY CONTRACT, OBLIGATING ANY FUNDS, EXPENDING ANY FUNDS, OR TAKING ANY OTHER ACTION WHATSOEVER IN FURTHERANCE OF CONSTRUCTION OF THE DARIEN GAP HIGHWAY, PENDING FINAL HEARING AND DISPOSITION OF THIS ACTION, OR UNLESS AND UNTIL THE DEFENDANTS HAVE TAKEN ALL ACTION NECESSARY TO COM-

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PLY FULLY WITH THE SUBSTANTIVE AND PROCEDURAL REQUIREMENTS

OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969".

2. GOP SPECULATION THAT SUIT AND CONSEQUENT PRELIMINARY INJUNCTION WERE POLITICALLY MOTIVATED IS TOTALLY INCORRECT. IN THIS CASE, THE OSTENSIBLE PURPOSE OF THE SUIT AND CONSEQUENT PRELIMINARY INJUNCTION IS THE CORRECT ONE, THAT IS, THE SUIT WAS FILED AND PRELIMINARY INJUNCTION WAS ISSUED ENTIRELY FOR ENVIRONMENTAL REASONS. ENVIRONMENTAL

GROUPS' OBJECTIVE IN CASE IS TO ESTABLISH PRECEDENT THAT USG IS REQUIRED BY ENVIRONMENTAL PROTECTION ACT TO TAKE INTO CONSIDERATION ENVIRONMENTAL CONCERNS PRIOR TO INITIATING OVERSEAS PROJECTS WITH POTENTIAL ENVIRONMENTAL IMPACT. THUS, ISSUE IS "POLITICAL" IN US DOMESTIC SENSE THAT IS, ENVIRONMENTAL CONCERNS ARE A MAJOR POLITICAL ISSUE IN U.S. IT IS NOT, HOWEVER, DIRECTED IN ANY WAY TOWARD PANAMA OR THE NEGOTIATIONS. PANAMA IS SIMPLY -- BUT UNFORTUNATELY -- AN INCIDENTAL VICTIM OF THE ENVIRONMENTALISTS' CAMPAIGN TO REQUIRE USG TO TAKE THEIR CONCERNS FOR THE ENVIRONMENT INTO ACCOUNT.

3. DEPARTMENT IS AWARE OF ECONOMIC AND POLITICAL IMPACT OF PRELIMINARY INJUNCTION IN PANAMA. MEETING BETWEEN STATE, JUSTICE, AND TRANSPORTATION DEPARTMENTS TENTATIVELY SET FOR WEEK OF OCTOBER 27 TO CLARIFY MATTER AND SET STRATEGY. INITIAL THOUGHTS ON COURSE OF ACTION ARE TO CONCURRENTLY APPEAL IN COURT FOR THE LIFTING OF THE PRELIMINARY INJUNCTION AND FOR DOT TO BEGIN WORK ON AN ENVIRONMENTAL IMPACT STATEMENT. FYI: SUCH A STATEMENT COULD BE READY IN ABOUT SIX MONTHS, PERHAPS LESS. END FYI.

4. WE WILL PROVIDE MORE DETAILED ASSESSMENT AND GUIDANCE AFTER MEETING BETWEEN STATE, JUSTICE AND TRANSPORTATION DEPARTMENTS. IN INTERIM, AMBASSADOR JORDEN SHOULD INFORM LAKAS OF ABOVE AND STRESS THAT THERE IS NO POLITICAL MOTIVATION WHATSOEVER BEHIND ACTION AND THAT PRELIMINARY INJUNCTION IS AT ODDS WITH U.S. POLICY VIS-A-VIS PANAMA. ALTHOUGH WE DO NOT HAVE ANY CONTROL OVER DECISIONS OF U.S. COURTS, IGMS. GOVERNMENT WILL BE DOING EVERYTHING POSSIBLE TO PERMIT THE PROJECT TO CONTINUE. KISSINGER
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OCT PASS MPI.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CONSTRUCTION, HIGHWAYS, COURTS, CONTRACTS
Control Number: n/a
Copy: SINGLE
Draft Date: 24 OCT 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE254129
Document Source: CORE
Document Unique ID: 00
Drafter: DJPEASHOCK:ZC
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750371-0394
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19751022/aaaaatvv.tel
Line Count: 108
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN ARA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 PANAMA 6530
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 09 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <09 SEP 2003 by izenbei0>; APPROVED <12 NOV 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: DISTRICT OF COLUMBIA COURT INJUNCTION ON DARIEN GAP HIGHWAY
TAGS: ELTN, PN
To: PANAMA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006